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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,146	07/19/2006	Peter Jarvis Goodwin	DEP5062USPCT	1965
27777	7590	10/05/2009		
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			EXAMINER LAWSON, MATTHEW JAMES	
			ART UNIT	PAPER NUMBER
			3775	
			MAIL DATE	DELIVERY MODE
			10/05/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/566,146

Applicant(s)

GOODWIN ET AL.

Examiner

MATTHEW LAWSON

Art Unit

3775

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 1-6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 11th, 2009 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 7 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. With regards to the newly amended claim limitation "automatically displaced relative to one another" in line 17 of claim 7. The applicant states that this limitation can be found in ¶45 of the specification, the examiner respectfully disagrees with this claim. Paragraph 45, teaches only that the hook causes the plate to displace relative to the closure cap and bearing cap until locked portions of

the hook surfaces engages the surface of the bar and does not disclose this action "automatically" occurring.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 7-10, 15, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Lechot (US 5,658,290).

Lechot discloses an instrument assembly for use in orthopedic surgery, comprising a component (1, figure 2) that is position able within a body cavity to engage a bone, the component having an open end (figure 1) and at least one bar (2, figure 1) extending across the open end; and a manipulator (see figure below) having at least one clasp (see figure below) for engaging a portion of the bar so as to fasten the component to the manipulator, the clasp comprising; a plate (see figure below) having a plate surface (see figure below) and at least one hook (see figure below) extending away from the plate surface, the hook having a root (see figure below) wherein the hook connects with the plate surface, a free end (see figure below), an undersurface (see figure below), and a mouth (see figure below) defined between the free end and the plate surface, and wherein the distance between the undersurface of the hook and the plate surface decreases when measured from the free end to the root (see figure below); a collar (see

figure below) having at least one pin (11, figure 2) extending upwardly therefrom; and a spring (9, figure 2) disposed between the collar and the plate, the spring being configured to bias the collar toward the plate; and wherein the hook, pin, and spring are configured, *i.e. capable*, such that, when the portion of the bar is disposed within the mouth and is moved relative to the plate from a first position (placed into the mouth), where the bar portion contacts the undersurface of the free end, to a second position toward the root (halfway between the free end and the root), the hook and pin are automatically displaced relative to one another thereby enabling the portion of the bar to be moved to a third position between the root and the pin (directly abutting the root, furthest from the free end. This is accomplished by slightly sliding the slider portion 6, figure 2, to a point where the plate portion contacts both the pin and undersurface of the free end and sliding the bar automatically displaces the hook and pin relative to each other), wherein the manipulator has a longitudinal axis (see figure below), and the spring is configured to bias the collar toward the plate in a direction along the longitudinal axis (figure 2). The collar, the plate and the spring are configured such that, when assembled together, the distal end of the at least one pin is located between the surface of the plate and the component (figure 2), wherein the thickness of the at least one hook is thinner at the free end as compared to the thickness proximal the root (see figure below). The distance between the undersurface of the hook and the plate surface is approximately constant for the second portion (see figure below), and the undersurface of the second portion of the hook and the plate surface are approximately parallel (see figure below), wherein the distance between the undersurface at the root of

the hook and the plate surface is approximately equal to the thickness of the portion of the bar (figure 2), and the distance between the root of the hook and the pin is slightly greater than the width of the portion of the bar (figure 2). The manipulator includes at least two clasps (figures 2-3) which are arranged rotationally symmetrically around a central point (see figure below), and the component includes corresponding bar portions, so that the bar portions (2, figure 2) can be positioned in corresponding clasps by relative rotation between the component and the manipulator around the central point.

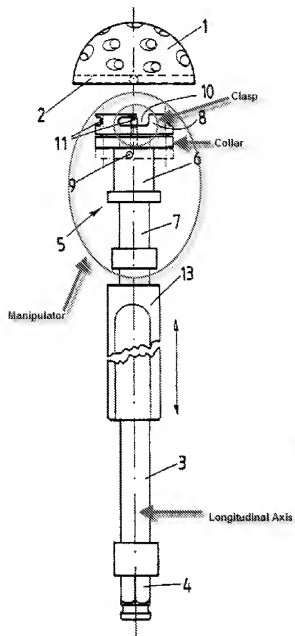


FIG. 2

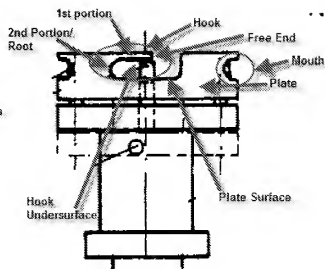
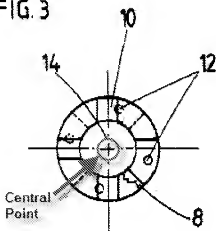


FIG. 3



Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

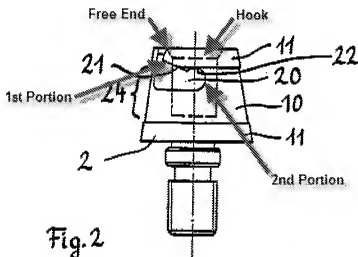
6. Claims 11-14 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lechot (US 5,658,290 in view of Friesinger et al. (US 4,906,147).

Regarding claims 11-14, and 16-17 Lechot discloses the claimed invention except for the distance between the undersurface of the hook and the plate surface decreasing at a constant rate from the free end to the root, the rate forming an angle less than 40 degrees and at about 15 degrees.

Friesinger discloses a hook (see figure below) having a first and second portions (see figure below), the undersurface of the hook and the plate surface decreasing at a constant rate (21, figure 2) from the free end (see figure below) to the root forming an angle (see figure below). The angle being of small magnitude to require a downward

force on the plate to permit engagement of the plate with the root, thereby eliminating accidental engagement and locking and reducing the likelihood of disengagement of the plate from the root (column 3, lines 3-11).

Friesinger discloses the claimed invention except for the angle is not more than 40 degrees and of about 15 degrees. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the angle of Friesinger to be about 15 degrees, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).



Response to Arguments

7. Applicant's arguments with respect to claims 7-18 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. **See attached PTO-892.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW LAWSON whose telephone number is (571)270-7375. The examiner can normally be reached on M-F, 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Barrett can be reached on 571-272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. L./
Examiner, Art Unit 3775

/Thomas C. Barrett/
Supervisory Patent Examiner, Art
Unit 3775